

**COMMONWEALTH OF THE BAHAMAS
INDUSTRIAL TRIBUNAL**

No. IT/ NES/ 166 of 2019

In The Matter of The Industrial Relations Act

And

In the Matter of the Industrial Relations (Tribunal Procedure) Rules 2010

BETWEEN

LONA BROWN

Applicant

AND

GRAYCLIFF CIGAR COMPANY / INNOVATIVE JOB SOLUTIONS

Respondent

BEFORE: Her Honour Vice President Simone I. Fitzcharles

APPEARANCES: Ms Lona Brown (Applicant Pro Se)

Mr Jason Fernander for the Respondent

DECISION

(Note of Ex Tempore Ruling)

1. This is a trade dispute concerning unpaid salary claimed by the Applicant, Ms Lona Brown against the Respondent Graycliff Cigar Company / Innovative Job Solutions. The matter was referred to the Industrial Tribunal for a determination by a Certificate of Referral of a Trade Dispute issued by the Minister of Labour on 28 October 2019.
2. The Applicant filed an Originating Application (Form A) in the Industrial Tribunal on 16 December 2019 by which she claimed she was suspended by the Respondent for a total of 7 days. She also claims her salary for IT work from 18 July 2019 through 31 July 2019 which included the period of suspension. The Applicant argues that she was not paid her salary during her suspension and did not receive her monthly wages for work performed.

3. The Respondent has not filed an Appearance or Defence and but has attended before the Tribunal to be heard on the claim. The Tribunal gave leave for the Respondent to be heard in its defence.
4. The Applicant has given evidence that she began working for the Respondent in February 2013. She worked full-time (40 hours a week) as an Accountant's Assistant and earned a basic weekly wage of \$600 plus for her Accountant's Assistant position and an additional \$600 monthly for IT work. On 18th July 2019 the Respondent suspended the Applicant without pay initially for 2 days on the basis of lateness and absenteeism. However, when she returned to work after the suspension as scheduled, the Respondent extended her suspension without pay for another week on the same basis, although she was not late or absent when she returned. She therefore believed her suspension was unjustified because she had already been punished by the Respondent and committed no new infractions. She also believed that she was not sufficiently absent or late to attract a punishment.
5. Following suspension Ms Brown returned to work and performed her job for the Respondent, but received no wages for her IT work as contracted up to 31 July 2019. The Respondent resigned from her position with the Respondent on 4 October 2019.
6. The Tribunal has received from the Applicant letters from Jason Rolle, Operations Manager of the Respondent by which she was suspended.
7. Mr Jason Fernander, Human Resources Manager of the Respondent, gave evidence on behalf of the company. He indicated that he agreed Ms Brown was suspended for 7 days. He produced a photocopy of a document entitled Graycliff Group of Companies Handbook and drew the Tribunal's attention to page 16 under the heading "Discipline & Discharge" where it is stated: "C. The Company may suspend without pay or terminate your employment without notice or aymnt in lieu of notice, in the event of misconduct in the course of your duties including but not limited to...frequent absences...[and] frequent lateness."
8. When asked whether Ms Brown received a copy of this document and whether he could show it by evidence, Mr Fernander responded that he could not say that Ms Brown got it. The Respondent brought no witness to the Tribunal hearing who could say Ms Brown got

the Handbook and there was no document produced showing an acknowledgement by Ms Brown of having received the Graycliff Group of Companies Handbook.

9. The employer's obligation to pay an employee wages is set out in section 60(1) of the Employment Act, Chapter 321A, Statute Laws of The Bahamas. The section provides: "In any contract of service hereafter to be made for the employment of any employee for the performance of any work within The Bahamas the wages of such employee shall be made payable and be paid at regular intervals of not more than one months to the individual employee in the currency of The Bahamas and not otherwise." Ms Brown's contract of employment, albeit verbal, contained the obligation of the employer to pay her a salary also.
10. It was at the behest of the Respondent that the Applicant stayed away from work for 1 week and 2 days on suspension. Does the employer have an automatic right to suspend an employee without pay? According to Osadebay JA in his work, 'Labour Law In The Bahamas', (2005, p. 153):

"Common law does not imply into any contract of employment any power for an employer to suspend an employee for misconduct. The only power implied is the power to dismiss for breach of the terms of employment provided that they go to the root of the contract or for gross misconduct.

"An employer in The Bahamas therefore has no power of suspension of an employee for any misconduct or breach of the terms of employment unless such power has been provided for in the contract of employment or implied by custom in the contract. In Hanley v Pease (1915) 1 KB 698 the Court stated that an employer had no such right of suspension unless provided for or implied by custom. Where an employer suspends an employee therefore unless such power is provided for as stated above, the employer is obliged to continue to pay wages or salary to the employee during such period of suspension."

11. Based on the evidence, the Tribunal is satisfied that the Applicant's claim is made out sufficiently. The Respondent had not proven that it reserved the right to suspend the employee by contract or custom, and as such that it had a right to suspend her without pay. The reality is that the Respondent's only witness admitted he could not say Ms Brown received a copy of the Handbook.

12. The Tribunal therefore awards the Applicant the amount of One Thousand, One Hundred and Forty dollars (\$1,140) to be paid forthwith by the Respondent, which is calculated as follows:

<u>Item</u>	<u>Amount</u>
Wages for 1 week and 2 days @ \$600 weekly	\$ 840.00
Wages for IT work for ½ month (July 18 – 31 2019)	\$ 300.00
<u>TOTAL AWARD</u>	<u>\$1,140.00</u>

13. For the avoidance of doubt, the award of Three Hundred dollars (\$300.00) for IT salary from 1 July through 17 July 2019 which was granted on 15 July 2020 by this Tribunal is not to be counted as a part of this award, but stands separately.

AND THIS IS THE ORDER OF THIS TRIBUNAL

Dated this 20th day of July A.D. 2020.

Her Honour

Simone I. Fitzcharles
Vice President

